

MICHIGAN CORPORATION & SECURITIES BUREAU

RELEASE NO. 93-4-S

TO: ALL INTERESTED PARTIES

SUBJECT: Availability of Section 402(b)(19) Exemption Extension of
Release No. 82-5

General Background

The Bureau has received numerous requests concerning the availability of the exemption from registration contained in Section 402(b)(19) of the Michigan Uniform Securities Act, 1964 PA 265, as amended. Many of these requests involve similar facts and address issues which have previously been determined by the Bureau in various no action letters and interpretive opinions.

Section 402(b)(19) exempts from registration "any transaction incident to a class vote by shareholders pursuant to the certificate of incorporation or the applicable corporate statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation."

In Release NO. 82-5 the Bureau determined that the Section 402(b)(19) exemption was available in three situations. The purpose of this Release is to further expand Section 402(b)(19) to cover the following factual situations:

- (1) The shareholders of a business trust or REIT ("Trust A") operating as an open-end management investment company registered under the Investment Company Act of 1940, are being asked to vote on a proposal whereby another business trust or REIT ("Trust B") operating as an open-end management investment company registered under the Investment Company of 1940, will acquire all of the assets and assume all of the liabilities of Trust A in exchange for shares of beneficial interest in Trust B equal in value to the value of the net assets of Trust A transferred to Trust B. In this situation, the transaction must be approved by the shareholders of Trust A.
- (2) A business trust or REIT purchases the assets and assumes the liabilities of a corporation in exchange for its shares of beneficial interest. The corporation is then terminated and shares of beneficial interest of the business trust or REIT are distributed in liquidation to the shareholders of the corporation. The transaction involving the exchange of assets for shares of beneficial interest and the termination of the corporation is subject to approval by a vote of the corporation's shareholders.

Action or Interpretation:

The Bureau has determined that the exemption from registration contained in Section 402(b)(19) is available in the above described fact situations. In each instance, the transaction is sufficiently analogous to those specified in Section 402(b)(19) that registration is not required for investor protection.

The Bureau will no longer issue no action letters or interpretive opinions in these two factual situations.

Authority:

Act 265 of 1964, Section 402(b)(19).

Signed by Carl L. Tyson, Director
Corporation & Securities Bureau
Dated: September 10, 1993